attach until the partnership is terminated, and its affairs completely wound up.[12] Since by the American rule such lands are considered as personalty only for partnership purposes, as soon as the affairs of the partnership are settled, the widow is entitled to dower in the surplus.[13] In England, however, where the conversion is out and out, and the partnership realty is considered as personalty even after the settlement of partnership affairs, it is of course at no time subject to dower.[14]

The conveyance of real estate is an act so closely pertaining to the inherent nature of the land itself that it is unaffected by this doctrine of conversion, and the same formalities are required for the conveyance of partnership real estate as of that of an individual.[15] And it never becomes personalty, even during the continuance of the firm, so as to give one partner power to dispose of the firm's legal interest in it.[16]

While in America, in the absence of agreement to the contrary, partnership realty is converted into personalty only *pro tanto* for the purpose of partnership equities, yet if it can be clearly shown that it was the partners' intention to regard it as personalty, not only for partnership, but for all purposes, effect will be given by the courts to such intention.[17] The partners are thus allowed to extend by agreement the doctrine of conversion as far as is allowed by the English doctrine. And such agreement may be implied upon consideration of all the facts, including the nature of the partnership business, the character and extent of the realty involved, and the partners' mode of treating and considering it.[18]

ADMISSIBILITY IN CRIMINAL CASES OF EVIDENCE ILLEGALLY OBTAINED:—The doctrine that an accused person cannot be compelled to testify against himself was early incorporated into the common law of England,[1] probably because of the revolt against the barbarous trials of thumb-screw days.[2] This doctrine, together with the prohibition of "unreasonable searches," was made a part of the United States Constitution,[3] and of the constitutions of nearly all of the States. These provisions are held to prohibit forcing the

---

[12] Mallory *v.* Russell, 71 Iowa 63, 60 Am. Rep. 776; Willet *v.* Brown, 65 Mo. 138, 27 Am. Rep. 265.

[13] Lenow *v.* Fones, 48 Ark. 557; Woodward-Holmes Co. *v.* Nudd, 58 Minn. 236, 27 L. R. A. 340.

[14] Essex *v.* Essex, 20 Beav. 442, 52 Eng. Reprint 674.

[15] Butts *v.* Cooper, *supra;* Fooks *v.* Williams, *supra.*

[16] Davis *v.* Christian, 15 Gratt. (Va.) 11.

[17] Holmes *v.* Self, 79 Ky. 297.

[18] Lowe *v.* Lowe, 76 Ky. (13 Bush) 688; Rosenbaum *v.* City of New York, 109 N. Y. Supp. 775; Buckley *v.* Doig, 188 N. Y. 238; Wilson *v.* Wilson, 74 S. C. 30. But see Hale *v.* Henrie, 2 Watts (Pa.) 143, 27 Am. Dec. 289: Agreement must be by deed or writing placed on record.

[1] Entick *v.* Carrington, 19 How. St. Tr. 1030.

[2] 5 HARV. L. REV. 71.

[3] 4th. and 5th. Amendments.

accused to produce letters, documents, and other subjects of evidence tending to incriminate him.[4] The question as to how far this doctrine should be extended, however, is one on which there is a great difference of opinion among the authorities.[5] Some of the courts hold that this constitutional provision should be liberally interpreted in favor of the accused, and the doctrine extended to the exclusion of evidence illegally obtained.[6] This view, held by the minority,[7] seems to have originated in *obiter* expressions in the case of *Boyd* v. *United States*.[8]

The recent case of *Underwood* v. *State* (Ga.), 78 S. E. 1103, affords an example of the liberal interpretation of this provision. In that case, after accused had been arrested on the charge of violating the Penal Code of Georgia[9] by keeping intoxicants on hand at his place of business, officers forcibly took his keys from his pockets and, without a warrant, unlocked the safe in his office, and found in it several pints of whiskey. The testimony as to the discovery of the whiskey was held to be inadmissible, because of the provision of the State constitution that "no person shall be compelled to give testimony tending in any manner to incriminate himself."

In the case of *Boyd* v. *United States*[10] the court held unconstitutional a revenue act which authorized a federal court to compel a defendant to produce private invoices, affidavits, letters, or papers, in revenue cases, on pain of having the allegations of the prosecuting attorney taken as confessed. This act, requiring the accused, by an affirmative act, to furnish evidence incriminating himself, clearly forced the accused to testify against himself in contravention of the Fifth Amendment to the Constitution; but in delivering the opinion, the court, speaking *obiter*, discussed the doctrine of evidence obtained by illegal seizures, and seemed to imply that any evidence illegally obtained would be inadmissible.[11]

Later, the same court, in the case of *Adams* v. *New York*,[12] held that the admission of papers illegally obtained from the possession of the accused, as evidence against him, was not error, distinguishing this case from the case of *Boyd* v. *United States*,[13] and pointing out the fact that the accused, in the later case, was not required to incriminate himself by any affirmative act, and that therefore the Fifth Amendment to the Constitution was not violated. It was also

---

[4] Boyd *v.* United States, 116 U. S. 616.
[5] 4 WIGMORE ON EVIDENCE, 3125, *et seq.*
[6] Underwood *v.* State, *infra.*
[7] 4 WIGMORE ON EVIDENCE, § 2264. Underwood *v.* State, *infra.*
[8] 116 U. S. 616. Hoover *v.* McChesney, 81 Fed. 472; State *v.* Slamon, 73 Vt. 212, 50 Atl. 1097; State *v.* Height, 117 Ia. 650, 91 N. W. 935; Blum *v.* State, 94 Md. 375, 51 Atl. 26.
[9] Georgia Code (1910), § 426.
[10] 116 U. S. 616.
[11] 4 WIGMORE ON EVIDENCE, § 2264.
[12] 192 U. S. 585.
[13] Lum Yan *v.* United States, 193 Fed. 970.

held that this was no violation of the constitutional privilege from unlawful search or seizure as prohibited by the Fourth Amendment.

The decided majority of the courts hold, as was held in *Adams* v. *New York*,[14] that if the evidence is pertinent to the issue, the fact that it was illegally obtained is not a valid objection to its admissibility, if the accused is not required to perform any affirmative act.[15] Adopting the doctrine that evidence illegally obtained is not for that reason inadmissible, the courts have held that forcing an accused person to surrender his shoes, for the purpose of comparing them with tracks near the scene of the crime, is proper.[16] On the contrary, where the accused is forced to make a footprint, or to place his foot in a track near the scene of the crime, it is rightfully held that evidence of this fact is inadmissible,[17] as this is forcing the accused to furnish evidence against himself by an affirmative act. There is, however, authority to the contrary.[18] It has been held that evidence obtained by a physical examination of the accused, over his objection, is admissible.[19] Where the defendant submits to the examination without objection, it is well settled that evidence so obtained is admissible.[20] Requiring a prisoner to stand up before a jury for identification does not compel him to give evidence against himself,[21] but it is error for the court to compel the accused to exhibit to the jury a portion of his body not ordinarily visible, as evidence of its condition, since this is compelling him to incriminate himself by an affirmative act.[22] But here also there is much authority *contra*.[23] Clothing or other articles taken from the accused on his arrest, may be introduced as evidence against him.[24]

The true rule seems to be that the court will not reject evidence because obtained illegally, if the accused was not forced to perform an affirmative act in the production of the evidence.[25] The decisions, however, are in hopeless conflict, and any attempt to reconcile them would be futile.[26]

---

[14] *Supra.*

[15] Gindrat *v.* People, 138 Ill. 103, 27 N. E. 1085; Commonwealth *v.* Tibbetts, 157 Mass. 519; People *v.* Adams, 176 N. Y. 351, 68 N. E. 638; Hartman *v.* United States, 168 Fed. 30; State *v.* Turner, 82 Kan. 787, 109 Pac. 654; GREEN. EV. (Redf. Ed.), § 254a; 12 Cyc. 402.

[16] People *v.* Van Wormer, 175 N. Y. 188, 67 N. E. 299.

[17] Cooper *v.* State, 86 Ala. 610, 6 So. 110.

[18] Walker *v.* State (Tex.), 32 Am. Rep. 595.

[19] O'Brien *v.* State, 125 Ind. 38, 25 N. E. 137. *Contra,* State *v.* Height, *supra.*

[20] State *v.* Tettaton, 159 Mo. 354, 60 S. W. 743; State *v.* Strubble, 71 Ia. 11, 32 N. W. 1.

[21] People *v.* Goldenson, 76 Cal. 328, 19 Pac. 161.

[22] Blackwell *v.* State, 67 Ga. 76.

[23] State *v.* Ah Chuey, 14 Nev. 79, 33 Am. Rep. 530. For a criticism of this case, see note, 33 Am. Rep. 540.

[24] Drake *v.* State, 75 Ga. 413.

[25] Adams *v.* New York, *supra.*

[26] See 13 HARV. L. REV. 302; 4 COL. L. REV. 60.